PART IV

Section 1-A

CENTRAL BILLS AND REPORTS OF THE SELECT COMMITTEES THEREON

NOTIFICATION.

(LAW DEPARTMENT).

No. LAW 31 LCA 65. Bangalore, dated 5th April 1965.

Ordered that the Income-Tax (Amendment) Bill 1965 (Central Bill 3 of 1965) which has been published in the *Gazette of India*, Extraordinary, Part II, Section 2, dated the 18th February 1965, be republished in the *Mysore Gazette*, for general information.

By Order and in the name of the Governor of Mysore,

H. K. ANANTHASUBBA RAO,
Under Secy. to Govt., L.D.

LOK SABHA

The following Bill was introduced in Lok Sabha on the 19th February 1965 :—

BILL No. 3 OF 1965

A Bill further to amend the Income-tax, Act 1961 and to validate certain searches under that Act.

BE it enacted by Parliament in the Sixteenth Year of the Republic of India as follows:—

1. Short title.— This Act may be called the Income-tax (Amendment) Act, 1965.

2. Substitution of new sections for section 132. Search and seizure.— For section 132 of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the principal Act), the following sections shall be substituted, namely :—

'132. (1) Where the Director of Inspection or the Commissioner, in consequence of information in his possession, has reason to believe that—

(*a*) any person to whom a summons under sub-section (1) of section 37 of the Indian Income-tax Act, 1922 (11 of 1922) or under sub-section (1) of section 131 of this Act, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922 or under sub-section (1) of section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account, or other documents as required by such summons or notice, or

(*b*) any person to whom a summon or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced any books of account or other document

which will be useful for, or relevant to, any proceeding under the Indian Income-tax Act, 1922 (11 of 1922) or under this Act, or

(*c*) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been disclosed for the purposes of the Indian Income-tax Act, 1922 (11 of 1922) or this Act (hereinafter in this section referred to as the undisclosed income or property),

he may authorise any Deputy Director of Inspection, Inspecting Assistant Commissioner, Assistant Director of Inspection or Income-tax Officer (hereinafter referred to as the authorised officer) to—

(*i*) enter and search any building or place where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;

(*ii*) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (*i*) where the keys thereof are not available;

(*iii*) seize any such books of account, other documents, money, bullion, jewellery, or other valuable article or thing found as a result of such search;

(*iv*) make a note or an inventory of any such money, account or other documents or make or cause to be made extracts or copies therefrom;

(*v*) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing.

(2) The authorised officer may requisition the services of any police officer or of any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub-section (1) and it shall be the duty of every such officer to comply with such requisition.

(3) The authorised officer may, where it is not practicable to seize any such book of account, other document, money, bullion, jewellery or other valuable article or thing, serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.

(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922) or under this Act.

(5) Where any money, bullion, jewellery or other valuable article or thing (hereinafter in this section and section 1 2A referred to as the assets) is seized under sub-section (1), the Income-tax Officer, after affording a reasonable opportunity to the person concerned for being heard and making such enquiry as may be prescribed, shall, within ninety days of the seizure, make an order, with the previous approval of the Commissioner,—

(*i*) estimating the undisclosed income (including the income from the undisclosed property) in a

summary manner to the best of his judgment on the basis of such materials as are available with him;

(*ii*) calculating the amount of tax on the income so estimated in accordance with the provisions of the Indian Income-tax Act, 1922 (11 of 1922) or this Act;

(*iii*) specifying the amount that will be required to satisfy any existing liability under this Act and any one or more of the Acts specified in clause (*a*) of sub section (1) of section 230A in respect of which such person is in default or is deemed to be in default,

and retain in his custody such assets or part thereof as are in his opinion sufficient to satisfy the aggregate of the amounts referred to in clauses (*ii*) and (*iii*) and forthwith release the remaining portion, if any, of the assets to the person from whose custody they were seized:

Provided that if, after taking into accounts the materials available with him, the Income-tax Officer is of the view that it is not possible to ascertain to which particular previous year or years such income or any part relates, he may calculate the tax on such income or part, as the case may be, as if such income or part thereof were the total income chargeable to tax at the rates in force in the financial year in which the assets were seized.

Provided further that where a person has paid or made satisfactory arrangements for payment of all the amounts referred to in clauses (*ii*) and (*iii*) or any part thereof, the Income-tax Officer may, with the previous approval of the Commissioner, release the assets or such part thereof as he may deem fit in the circumstances of the case.

(6) The assets retained under sub-section (5) may be dealt with in accordance with the provisions of section 132A.

(7) If the Income-tax Officer is satisfied that the seized assets or any part thereof were held by such person for or on behalf of any other person, the Income-tax Officer may proceed under sub-section (5) against such other person and all the provisions of this section shall apply accordingly.

(8) The books of account or other documents seized under sub-section (1) shall not be retained by the authorised officer for a period exceeding one hundred and eighty days from the date of the seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Commissioner for such retention is obtained :

Provided that the Commissioner shall not authorise the retention of the books of account and other documents for a period exceeding thirty days after all the proceedings under the Indian Income-tax Act, 1922 (11 of 1922) or this Act in respect of the years for which the books of account or other documents are relevant are completed.

(9) The person from whose custody any books of account or other documents are seized under sub-section (1) may make copies thereof, or take extracts therefrom, in the presence of the authorised officer or any other person empowered by him in this behalf, at such place and time as the authorised officer may appoint in this behalf.

(10) If a person legally entitled to the books of account or other documents seized under sub-section (1) objects for any reason to the approval given by the Commissioner under sub-section (8), he may make an application to the Board stating therein the reasons for such objection and requesting for the return of the books of account or other documents.

(11) If any person objects for any reason to an order made under sub-section (3), he may, within thirty days of the date of such order, make an application to such authority, as may be notified in this behalf by the Central Government in the Official Gazette (hereinafter in this section referred to as the notified authority), stating therein the reasons for such objection and requesting for appropriate relief in the matter.

(12) On receipt of the application under sub-section (10) the Board, or on receipt of the application under sub-section (11) the notified authority, may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit.

(13) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898) relating to searches and seizure shall apply, so far as may be, to searches and seizure under sub-section (1).

(14) The Board may make rules in relation to any search or seizure under this section in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorised officer—

(*i*) for obtaining ingress into such building or place to be searched where free ingress thereto is not available;

(*ii*) for ensuring safe custody of any books of account or other documents or assets seized.

Explanation 1.—In computing the period of ninety days for the purposes of sub-section (5), any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

Explanation 2.—In this section, the word "proceeding" means any proceeding in respect of any year, whether under the Indian Income-tax Act, 1922 (11 of 1922) or this Act, which may be pending on the date on which a search is

authorised under this section or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.

132A. Application of retained assets.—(1) The assets retained under sub-section (5) of section 132 may be dealt with in the following manner, namely.—

(*i*) The amount of the existing liability referred to in clause (*iii*) of the said sub-section and the amount of the liability determined on completion of the regular assessment or reassessment for all the assessment years relevant to the previous years to which the income referred to in clause (*i*) of that sub-section relates, and in respect of which he is in default or is deemed to be in default may be recovered out of such assets.

(*ii*) If the assets consist solely of money, or partly of money and partly of other assets, the Income-tax Officer may apply such money in the discharge of the liabilities referred to in clause (*i*) and the assessee shall be discharged of such liability to the extent of the money so applied.

(*iii*) The assets other than money may also be applied for the discharge of any such liability referred to in clause (*i*) as remains undischarged and for this purpose such assets shall be deemed to be under distraint as if such distraint was effected by the Income-tax Officer under authorisation from the Commissioner under sub-section (5) of section 226 and the Income-tax Officer may recover the amount of such liabilities by the sale of such assets and such sale shall be effected in the manner laid down in the Third Schedule.

(2) Nothing contained in sub-section (1) shall preclude the recovery of the amount of liabilities aforesaid by any other mode laid down in this Act.

(3) Any assets or proceeds thereof which remain after the liabilities referred to in clause (i) of sub-section (1) are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized.

(4) (*a*) *The Central Government shall pay simple interest at the rate of five per cent. per annum on the amount by which the aggregate of money retained under section* 132 *and of the proceeds, if any, of the assets sold towards the discharge of the existing liability referred to in clause* (iii) *of sub-section* (5) *of that section exceeds the aggregate of the amounts required to meet the liabilities referred to in clause* (i) *of sub-section* (1) *of this section.*

(*b*) *Such interest shall run from the date immediately following the expiry of the period of six months from the date of the order under sub-section* (5) *of section* 132 *to the date of the regular assessment or reassessment referred to in clause* (i) *of sub-section* (1) *or, as the case may be, to the date of last of such assessments or reassessments'.*

3. Amendment of section 271.—In section 271 of the principal Act, after sub-section (4), the following sub-sections shall be inserted, namely:—

"(4A) Notwithstanding anything contained in clause (*iii*) of sub-section (1), the Commissioner may, in his discretion, reduce or waive the amount of minimum penalty imposable on a person under the said clause if he is satisfied that such person—

(*a*) has, prior to the detection by the Income-tax Officer, of the concealment of particulars of

income in respect of which the penalty is imposable, or of the inaccuracy of particulars furnished in respect of such income, voluntarily and in good faith, made full and true disclosure of such particulars;

(*b*) has co-operated in any enquiry relating to the assessment of such income; and

(*c*) has either paid or made satisfactory arrangements for payment of any tax or interest payable in consequence of an order passed under this Act in respect of the relevant assessment year:

Provided that if in a case the minimum penalty imposable under clause (*iii*) of sub-section (1) in respect of the relevant assessment year, or where such disclosure relates to more than one assessment year, the aggregate of the minimum penalty imposable in respect of those years, exceeds a sum of rupees fifty thousand, no order reducing or waiving the penalty shall be made by the Commissioner unless the previous approval of the Board has been obtained.

(4B) An order under sub-section (4A) shall be final and shall not be called in question before any court of law or any other authority.".

4. Insertion of new section 275A.—In Chapter XXII of the principal Act, before section 276, the following section shall be inserted, namely:—

Contravention of order made under sub-section (3) of section 132.—"275A. Whoever contravenes any order referred to in sub-section (3) of section 132 shall be punishable with rigorous imprisonment which may extend to two years and shall also be liable to fine.".

5. Amendment of section 279.—In section 279 of the principal Act,—

(*a*) in sub-section (1), after the words "offence under", the words, figures and letter "section 275A or" shall be inserted;

(*ii*) after sub-section (1), the following sub-section shall be inserted, namely :—

"(1*A*) A person shall not be proceeded against for an offence under section 277 in relation to the assessment for an assessment year in respect of which the penalty imposable upon him under clause (*iii*) of sub-section (1) of section 271 has been reduced or waived by an order under sub-section (4*A*) of that section.";

(*iii*) after sub-section (2), the following sub-section shall be inserted, namely :—

"(3) Where any proceeding has been taken against any person under sub section (1), any statement made or account or other document produced by such person before any of the Income-tax authorities specified in clauses (*a*), (*b*), (*c*), (*d*) and (*e*) of section 116 shall not be inadmissible as evidence for the purpose of such proceedings merely on the ground that such statement was made or such account or other document was produced in the belief that the penalty imposable would be reduced or waived under sub-section (4A) of section 271 or that the offence in respect of which such proceeding was taken would be compounded.".

6. Validation of certain searches made.—Any search of a building or place by an Inspecting Assistant Commissioner or Income-tax Officer purported to have been made in pursuance of sub-section (1) of section 132 of the principal Act before the commencement of this Act shall be deemed to have been made in accordance with the provisions of that sub section as amended by this Act as if those provisions were in force on the day the search was made and shall not be called in question before any court of law or any other authority merely on the grouud—

(*i*) that the Inspecting Assistant Commissioner or the Income-tax Officer made such search with the assistance of any other person; or

(*ii*) that no proceeding under the Indian Income-tax Act, 1922 (11 of 1922) or the principal Act was pending against the person concerned when the search was authorised under the said sub-section.

7. Repeal and Saving.—(1) The Income-tax (Amendment) Ordinance, 1965 (1 of 1965) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act as if this Act had commenced on the 6th day of January, 1965.

STATEMENT OF OBJECTS AND REASONS

The main object of the Bill is to replace the Income-tax (Amendment) Ordinance, 1965 (1 of 1965). The Ordinance was promulgated on the 6th January, 1965 and contains provisions which were found to be immediately necessary, relating to searches and seizures, voluntary disclosures and validation of certain searches made under section 132 of the Income-tax Act, 1961. Opportunity has also been taken to include in the Bill certain other amendments which are incidental or supplemental to the above matters.

The more important provisions of the Bill are as follows:—

The powers of search and seizure are being enlarged, enabling seizure of any money, bullion jewellery or other valuable article or thing which represents either wholly or partly undisclosed income or property. The Income-tax Officer is being empowered to retain such of the assets seized as he may consider necessary to satisfy the liability estimated by him in respect of the undisclosed income and also any existing liability under the Direct Taxes Acts in respect of which the person concerned is in default or is deemed to be in default. The balance, if any, will be returned forth-

with. The retained assets will be applied for the discharge of such existing liabilities and of the liability determined on regular assessment relating to the undisclosed income, in respect of which the assessee is in default or is deemed to be in default. It is also clarified that proceedings in the course of which search warrants can be issued include future proceedings also.

Further, the Commissioner is being empowered to reduce or waive the amount of minimum penalty imposable in the case of voluntary disclosure A person in whose case the penalty is so waived or reduced will not be prosecuted in relation to the relevant assessments.

The notes on clauses explain the various provisions of the Bill.

NEW DELHI;

The 13*th February*, 1965. T. T. KRISHNAMACHARI.

Notes on Clauses.

Clause 2 of the Bill substitutes a new section for the existing section 132 and also adds a new section 132A.

The new section 132 includes certain provisions in addition to the existing ones.

The new sub-section (1) provides another circumstance, in addition to the existing ones, in which search or seizure may be authorised, *viz* , where any money, bullion, jewellery or other valuable article or thing which represents either wholly or partly undisclosed income or property is believed to exist. The power conferred on the Commissioner under sub-section (1) is also being conferred on the Director of Inspection and further the authorisation by the Director of Inspection or the Commissioner can also be to a Deputy Director of Inspection or an Assistant Director of Inspection. For the purpose of search and seizure the authorised officer may break open the lock of any door or locker, safe, almirah or any other receptacle where the keys thereof are not available.

The new sub-section (2) empowers, for the purposes of search and seizure, the authorised officer to requisition the services of any police officer or of any officer of the Central Government, or of both, to assist him.

Where it is not practicable to seize any asset found during the search, the new sub-section (3) empowers the authorised officer to serve an order on the person concerned not to remove or part with or otherwise deal with it except with his previous permission.

According to the new sub-section (4), during the course of search and seizure, the authorised officer may examine on oath any person who is found to be in possession of books of account or documents and assets like money, bullion and jewellery. This provision is intended to enable the Income-tax Officer to ascertain the true facts before an assessee can make up an explanation as a result of afterthought. The statement made during such examination may thereafter be

used in evidence in any proceedings under the Indian Income-tax Act, 1922 or the Income-tax Act, 1961.

The new sub section (5) provides that where any asset is seized, then within 90 days of such seizure and with the previous approval of the Commissioner, the Income-tax Officer shall pass an order estimating in a summary manner the undisclosed income (including the income from the undisclosed property), calculating the amount of tax on the same in accordance with the provisions of the law and specifying the amount that will be required to satisfy any existing liability under the direct taxes enactments in respect of which the person is in default or is deemed to be in default. In computing the period of 90 days, any period during which any proceeding in this regard is stayed by an order or injunction of any court, shall be excluded (*vide* Explanation 1 to the new section 132). Before making such an order the Income-tax Officer has to afford a reasonable opportunity to the person concerned for being heard and make such enquiry as may be prescribed. The Income-tax Officer shall retain such assets or part thereof which are, in his opinion, sufficient to satisfy the aggregate of the amount of liability determined in respect of the undisclosed income and the existing liabilities in respect of which the assessee is in default or is deemed to be in default. The remaining portion of the assets, if any, shall be forthwith released to the person from whose custody they were seized.

The aforesaid sub-section (5) furthur provides that if, after considering the materials available with him, the Income-tax Officer is of the opinion that it is not possible to ascertain which particular previous year or years such undisclosed income or any part of such income relates to, he may calculate the tax on the same as if it were the total income chargeable to tax at the rates in force in the financial year in which the assets were seized.

Where, however, a person has paid or made satisfactory arrangements for payment of the amount of liability relating to the undisclosed income estimated by the Income-tax Officer and the existing liabilities aforesaid, Income-tax

Officer may release such assets as he may deem fit. For this purpose, the Income-tax Officer has to obtain the previous approval of the Commissioner.

The new sub-section (6) provides that the assets retained under the provisions of sub-section (5) shall be applied in accordance with the provisions of the new section 132A.

The new sub-section (7) is self-explanatory.

The existing sub-sections (2), (3) and (4) have been re-numbered (8), (9) and (10) respectively with certain verbal changes consequential to the provisions of the new sub-section (1).

The new sub-section (11) gives a right to the person objecting to an order made under sub-section (5) to make an application to such authority as may be notified in this behalf by the Central Government. Such an application has to be made within thirty days of the order applied against.

The existing sub-section (5) has been re-numbered (12) with consequential changes made due to the insertion of the new sub-section (11).

The existing sub-section (6) has been re-numbered (13) with certain verbal changes.

The existing sub-section (7) has been re-numbered (14) and been further amended to clarify that the rules made by the Board in relation to any search or seizure may, *inter alia*, include the procedure for obtaining ingress into the building or place to be searched where free ingress thereto is not available and for ensuring safe custody of any books of account or other documents or assets seized.

The Explanation 2 to the new section 132 clarifies that the word "proceeding" means any "proceeding" in respect of any year, whether under the Indian Income-tax Act, 1922 or the Income-tax Act, 1961, which may be either pending or may have been completed on or before the date of search or seizure and includes also all proceedings under

the Income-tax Act, 1961 which may be commenced after such date in respect of any year.

The new section 132A makes provision relating to the application of assets retained under section 132. These assets may be applied to the discharge of the existing liabilities in respect of which the assessee is in default or is deemed to be in default as well as the liability in respect of the regular assessment or reassessmant for the assessment years relevant to the previous years to which the income relates and in respect of which the assessee is in default or is deemed to be in default. If money has been seized and retained such money may be applied for the purpose of discharge of both the above liabilities. If the money seized is not sufficient for the discharge of the above liabilities, the assets other than money which have been retained shall be deemed to be under distraint as if such distraint was effected by the Income-tax Officer under section 226 (5). The Income-tax Officer can sell such assets as he may find it necessary for the purpose of recovery of the aforesaid liabilities. The sale shall be effected in the manner laid down in the Third Schedule.

If any assets or proceeds thereof remain after the aforesaid liabilities have been discharged, they will be forthwith paid or made over to the person from whose custody they were seized.

The mode of recovery prescribed by section 132A shall not preclude the recovery of the amount of the liability by any other mode laid down in the Act.

Sub-section (4) of the new sub-section 132A provides for interest to be paid by the Central Government as compensation for retention of money seized and proceeds of assets sold in excess of the total tax liabilities against which they are applied. Where the aggregate of the amount retained under section 132 and the proceeds, if any, of the assets sold for the purpose of recovery of the existing liabilities referred to in that section exceed the aggregate of the existing liabilities in default and the liability determined on regular assessment, the Central Government shall

pay simple interest at the rate of 5 per cent per annum on the amount of such excess. The interest shall run from the date immediately following the end of six months from the date of the order under section 132 (5) to the date of regular assessment or reassessment relating to the undisclosed income, or, as the case may be, to the date of the last of such assessments or reassessments. No interest will be payable in relation to assets, other than money, which are not sold by the Income-tax Officer.

With a view to encourage voluntary disclosures of undisclosed income, *clause* 3 inserts a new sub-section (4A) in section 271 which empowers the Commissioner, in his discretion, to reduce or waive the amount of minimum penalty imposable under section 271 (1) (*iii*) in the case of a person who has voluntarily and in good faith made full and true disclosure of his concealed income, before detection of the same by the Income-tax Officer and, in addition, has co-operated in any enquiry relating to the assessment of the concealed income and has either paid or made satisfactory arrangements for payment of any tax or interest which may become payable in respect of the income concealed. Where the amount of minimum penalty imposable under section 271 (1) (*iii*) in respect of all assessment years involved exceeds Rs. 50,000, the previous approval of the Board has to be obtained by the Commissioner.

In order to ensure that an order under sub-section (3) of section 132 may not be contravened, *Clause* 4 inserts a a new section 275A which provides for punishment for contravention of such order.

Clause 5 amends sub-section (1) and inserts two new sub-sections, namely, (1A) and (3) in section 279.

The amendment to sub-section (1) is consequential to the insertion of new section 275A.

Sub-section (1A) provides that a person in whose case the penalty imposable under section 271 (1) (*iii*) has been reduced or waived by the Commissioner under sub-section (4A) of that section, shall not be liable to be prosecuted

under section 277 in relation to the assessment for the assesment year in respect of which the penalty imposable has been reduced or waived.

Sub-section (3) provides that where any prosecution has been started against any person, any statement made or account or other document produced by him before any of the Income-tax authorities of the rank of Income-tax Officer and above shall not be inadmissible as evidence for the purpose of the prosecution merely on the ground that such statement was made or such account or other document was produced in the belief that the penalty imposable would be reduced or waived under sub-section 271 (4A) or that the particular offence would be compounded.

Clause 6 validates certain searches purported to have been made in pursuance of section 132 (1).

The clause is self-explanatory.

FINANCIAL MEMORANDUM

Sub-section (4) of the new section 132A inserted by clause 2 of the Bill provides for interest to be paid by the Central Government in certain circumstances. The exact amount of interest so payable cannot be foreseen at the present, but it is expected that it would be of the order of Rs. 25,000.

The provisions of section 132 relating to seizure are also expected to involve some additional expenditure such as expenditure on arrangements for safe custody of assets seized. The amount of such expenditure cannot be foreseen at present with any degree of precision. It is expected, however, that such expenditure will be of the order of Rs. 1,00,000.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 2 of the Bill would enable the Board to frame rules regarding the enquiry to be made for purposes of section 132 (5). The clause also clarifies that the rules to be made by the Board in relation to any search or seizure made under section 132 (1) include rules to provide the procedure to be followed in a search or seizure for obtaining ingress into a building or place where ingress thereto is not available, and for ensuring safe custody of any books of account, other documents or assets seized.

The matters in respect of which rules will be made are matters of procedure or detail.

The delegation of legislative powers is, therefore, of a normal character.

S. L. SHAKDHER,
Secretary.

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